

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

WP(C).No. 28850 of 2007(H)

PETITIONER:

REENY MARY ZACHARIA,
ASSISTANT PROFESSOR (PLANT PATHOLOGY),
COLLEGE OF AGRICULTURE, PADANNAKKAD,
KASARGODE.

BY ADV. SRI.S.P.ARAVINDAKSHAN PILLAY
SMT.N.SANTHA
SRI.PETER JOSE CHRISTO
SRI.JOVY GEORGE VARGHESE

RESPONDENT:

KERALA AGRICULTURAL UNIVERSITY,
REPRESENTED BY ITS REGISTRAR,
VELLANIKKARA, THRISSUR.

BY STANDING COUNSEL SRI.RANJITH THAMPAN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 16/10/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

S. SIRI JAGAN, J.

WP(C) No. 28850 of 2007 - H

Dated this the 16th day of October, 2007

J U D G M E N T

The petitioner entered service as an Assistant Professor of Plant Pathology in the service of the respondent herein. She was under an obligation as per a bond executed by her to serve for five years in the place of her first posting viz, R.R.S., Moncompu. However, she was transferred and posted to Kottayam. While she was working at Kottayam, she was transferred to Kasargode by way of punishment. She challenged the same before this Court and this Court, by Ext.P5 judgment, declared that that transfer shall not be treated as punitive in nature. This Court also directed that a fresh enquiry shall be conducted into the allegations raised against the petitioner. This Court also directed that the order of transfer of the petitioner to Kasargode would be in force till such time a fresh enquiry against the petitioner was completed. The petitioner submits that in the fresh enquiry, the proceedings against the petitioner were

: -2- :

dropped. The petitioner submits that in such circumstances, in accordance with Ext.P5 judgment, the petitioner ought to have been transferred back to the place from where she was transferred to Kasargode or to any other place of her choice pointed out by her in Exts.P6 and P7. However, in spite of Exts.P6 and P7 representations in the matter, by Ext.P9, she has been arbitrarily retained at Kasargode itself. In the above circumstances, the petitioner seeks the following reliefs:-

- "i. call for the records leading to Exts.P8 and P9 and quash them to the extent they retain the petitioner at the College of Agriculture, Padannakkad, Kasargode District by the issuance of a writ of certiorari or any other appropriate writ, order or direction.
- ii. declare that the petitioner is entitled to transfer and posting to a place of her choice.
- iii. Issue a writ of mandamus or any other appropriate writ, order or direction commanding the respondent to give transfer and posting to the petitioner to one of the places of her choice specified in Exts.P6 and P7.

And

: -3- :

iv. grant such other reliefs as this Hon'ble Court deems fit and proper in the circumstances of the case including the costs of this writ petition (Civil).

2. The University has filed a statement to the effect that the petitioner's request for re-transfer can be considered only at the time of general transfer. It is also stated in the statement that petitioner has not submitted any complaint or representation to the University after the general transfer. The University also finds fault with the petitioner for approaching this Court directly without resorting to the Grievance Redressal mechanism available in the University.

3. I have considered the rival contentions in detail.

4. In paragraphs 5 and 6 of Ext.P5 judgment, this Court has held as follows:-

"5. Learned counsel for the petitioner accepts the above offer and submits that the petitioner is prepared to co-operate with the enquiry if any that may be instituted by the respondent. In view of the above, the report submitted by the Enquiry Officer earlier has to

: -4- :

be treated as non-est. Ordered accordingly. Similarly, the transfer of the petitioner to Padannakkad shall also be treated as though it was only on administrative grounds and not as a punitive measure as indicated in Ext.P10. In other words, the Enquiry Officer who may be appointed by the University, shall conduct a fresh enquiry. He shall look into the complaints/allegations, if any, against the petitioner untrammelled by any of the findings or observations made by his predecessor. The officer shall conduct the enquiry in an impartial manner after affording sufficient opportunity to the petitioner to produce documents, to examine witnesses if so requested.

6. It shall be ensured by the respondent that a new Enquiry Officer is appointed as expeditiously as possible, at any rate within two weeks from the date of receipt of a copy of this judgment. The Enquiry Officer shall complete the enquiry as expeditiously as possible, at any rate within six weeks from the date of assumption of charge of enquiry. Till such time the enquiry is completed, the order of transfer of the petitioner to Padannakkad shall remain in force. However, it will be open to the petitioner to approach the University and make a request to shift/transfer her to a nearby station of her choice. If there is any suitable vacancy to accommodate the petitioner, it will be open to the respondent to accede to her request."

(underlining supplied)

That judgment has become final and therefore, the University is bound by the directions in that judgment. In that judgment, this Court had specifically directed that till such time a fresh enquiry is completed, the order of transfer of the petitioner to Pattannakkad shall remain in force. That finding would have the effect of directing re-transfer of the petitioner to her original place of posting if, in the fresh enquiry, she is absolved from guilt. In the statement filed by the University, the University does not dispute the averment of the petitioner that in the fresh enquiry, charges against the petitioner have been dropped. The transfer to Kasargode was in fact as a punitive measure in view of the allegations against the petitioner from which the petitioner was exonerated in the fresh enquiry. When the reasons for such punitive transfer are no longer existing, the University is bound to remove that punishment also. Therefore, the petitioner is entitled to be re-transferred to the original place of posting from where the petitioner was transferred to Kasargode. The

:-6:-

University shall pass appropriate orders re-transferring the petitioner to her original place of posting where she was transferred to Kasargode within a period of two weeks from the date of receipt of a copy of this judgment. If the University is so willing, they may also transfer the petitioner to another station of the petitioner's choice.

This writ petition is disposed of as above.

**S. SIRI JAGAN,
Judge**

Mbs/

WP(C) NO. 28850 of 2007

:-7:-

S.SIRI JAGAN, J.

O.P.NO. OF 2001

J U D G M E N T

DATED: -0-2007

WP(C) NO. 28850 of 2007

:-8:-